

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
JOSE GUZMAN, et al., :
:
Plaintiffs, : 16-CV-03499 (GBD)
:
v. :
:
MEL S. HARRIS AND ASSOCIATES, LLC, : 500 Pearl Street
et al., : New York, New York
:
Defendants. : March 16, 2017
-----X

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: AHMAD KESHAVARZ, ESQ.
Law Offices of Ahmad Keshavarz
16 Court Street, 26th Floor
Brooklyn, New York 11241

For the Defendants: JEFFREY S. LICHTMAN, ESQ.
O'Hare Parnigian LLP
82 Wall Street
New York, New York 10005

SCOTT BALBER, ESQ.
Herbert Smith Freehills
450 Lexington Avenue
New York, New York 10017

Court Transcriber: SHARI RIEMER, CET-805
TypeWrite Word Processing Service
211 N. Milton Road
Saratoga Springs, New York 12866

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 THE CLERK: This is a matter for a status conference,
2 16-CV-3499, Jose Guzman v. Samserv Inc. and parties.

3 Attorneys, please state your name for the record.

4 MR. KESHAVARZ: Ahmad Keshavarz, the Law Office of
5 Ahmad Keshavarz for plaintiff, Your Honor. Good morning.

6 THE COURT: Good morning.

7 MR. LICHTMAN: Jeffrey Lichtman with O'Hare
8 Parnigian LLP representing defendants Samserv and Mlotok.

9 THE COURT: Good morning.

10 MR. LICHTMAN: Good morning, Your Honor.

11 MR. BALBER: Good morning, Your Honor. Scott Balber
12 from Herbert Smith Freehills on behalf of LR Credit 13 and
13 with me is my colleague Ben Mills.

14 THE COURT: Good afternoon -- I mean good morning.

15 Okay. There are a couple of issues that remain for
16 resolution. I know the parties sent me a joint letter asking
17 for certain things to happen. The things that I have listed
18 here include a motion by LRC to compel plaintiff to respond to
19 certain discovery requests. This has to do with tax returns,
20 bank statements and income in the period 2014 to 2016. I
21 gather the underpinnings of this is that the plaintiff had put
22 in issue the emotional distress caused by his financial
23 situation.

24 Have the parties had any discussions about that
25 since? I know that the plaintiff objected to it but on the

1 other hand indicated that even if the court were to grant it
2 should be more limited than the request. What do you have to
3 say?

4 MR. LICHTMAN: By way of update, Your Honor, no,
5 there have been no further discussions. We had some extensive
6 discussions I believe back in December which preceded our
7 letter request. There had been no subsequent discussions.
8 I'm happy to articulate in a little more detail the grounds
9 for our request and why we think we're entitled to this but I
10 realize that wasn't the question Your Honor asked. So I'm not
11 going to offer it --

12 THE COURT: Well, why don't you address the question
13 of exactly what it is that the plaintiff has said that
14 triggered the desire to get the information that you want.

15 MR. LICHTMAN: In terms of on the substance or the
16 response to our discovery request? I'm just --

17 THE COURT: Well, you can start with the substance
18 of it.

19 MR. LICHTMAN: Sure, Your Honor. In the complaint
20 the plaintiff says pretty plainly that as a result of this
21 alleged debt collection act that he feared he would not be
22 able to pay his rent, that he was concerned about being able
23 to provide for his family, and that he paints a rosy picture
24 of his financial situation prior to receiving this \$8,000
25 judgment.

1 Now, his sole alleged damages are garden variety
2 emotional distress. He never actually paid any money towards
3 this debt. It's purely the emotional distress impact of
4 having this debt judgment served upon him.

5 So here's what we need to know, Your Honor. First
6 of all, what were the other financial stressors in this man's
7 life because if it is true that this \$8,000 debt is one of
8 many, many debts totaling substantial amounts of money he will
9 be hard pressed to go in front of a jury and say well, forget
10 about that other \$100,000 in debt I may have accumulated to
11 all these other creditors. It was this \$8,000 debt and only
12 this \$8,000 debt that precipitated my emotional distress.
13 That's one kind of bucket of issues, Your Honor. What are the
14 other debts that he had incurred, what were the other --

15 THE COURT: Let me just stop you for a moment on
16 that notion because as it turns out we're a nation of debt.
17 So there are lots of people who have actually significant debt
18 and they're coping with it. But some people will tell you
19 that look, the debt that I know I've managed for it, I planned
20 for it, I get something I have no idea about, that just throws
21 my whole plan off. I mean I know that I got out of law school
22 and I owed \$100,000, okay. It's a given. You make your deal
23 with the devil and you live with it and then this bank told me
24 I owed \$7,000 I knew nothing about. I mean --

25 MR. LICHTMAN: Your Honor, that would be a perfectly

1 legitimate response to being asked questions at a deposition
2 or at trial about the other debts but all we're doing here,
3 Your Honor, is for the purposes of discovery to ascertain
4 documents that are reasonably calculated to lead to discovery
5 of admissible evidence. I'm entitled to ask that question.

6 THE COURT: How much of this do you need to know and
7 what -- I mean you asked for a whole bunch of things.

8 MR. LICHTMAN: Let me articulate the second half of
9 it if I can and then I'll come back and try to narrow what
10 we're actually looking for, Your Honor.

11 The second half of it, Your Honor, is the
12 relationship between the amount of the debt and the amount of
13 his income and net worth and assets. So it's kind of the flip
14 side of what we just talked about. If it is the case, and I'm
15 not suggesting it is but I think I'm entitled to know, that
16 Mr. Guzman was making \$1 million a year and had \$5 million
17 sitting in a checking account or a brokerage account I think
18 that would undercut the notion that an \$8,000 debt would cause
19 him emotional distress, would cause him to worry about not
20 being able to feed his family, et cetera. It's the other side
21 of the coin.

22 But let me answer your prior question now, Your
23 Honor. How can we narrow it. All I want to know, Judge, it's
24 actually very simple. What was his income during the relevant
25 time frame, that couple of year period, and what were his

1 debts. I guess I'm not sure where the burden comes on this
2 issue if it is the case that he had very few debts. I mean I
3 literally need a copy of the credit card statements in the
4 time frame or the loan agreement in the time frame. I can't
5 imagine why it would be voluminous. So I'm somewhat had
6 pressed to --

7 THE COURT: Okay. Let's take the credit card
8 statements for example. There's really two kinds of credit
9 card holders, those that pay off everything and those that
10 don't. Those that don't all you really need is the most
11 recent one because if he's not paying it off it will show you
12 what the accumulated debt is so you don't need to go back to a
13 whole bunch, and if he's paying it off it's -- what the debt
14 shows is actually not indicative of what the problem is. So
15 what is it that you want from him?

16 MR. LICHTMAN: I understand your point, Your Honor.
17 Today may not be relevant because we're well into the
18 litigation but what I would suggest is perhaps the statement,
19 credit card -- all credit card statements for December, end of
20 December of each of the relevant years. So basically one year
21 end statement per year for whatever credit card debts.

22 THE COURT: What do you consider relevant years?

23 MR. LICHTMAN: I think we had asked for 2014 and
24 2015.

25 THE COURT: When did the -- when did the debt at

1 issue come into play?

2 MR. LICHTMAN: Well, the collection lawsuit was
3 filed in 2007 and I believe the judgment was entered 2014. Am
4 I right about that? I'm just going to get the precise date,
5 Your Honor.

6 [Pause in proceedings.]

7 MR. LICHTMAN: 2007 was the filing of the complaint.
8 I don't have the exact date in front of me. I apologize, Your
9 Honor.

10 THE COURT: So 2014 and 2015 so you could see --
11 rather than have him go on -- what's wrong with that? Let me
12 ask plaintiff's counsel.

13 MR. KESHAVARZ: There are a few things. First of
14 all, he didn't ask for a narrow scope. He asked for a bazooka
15 of information for four years, tax returns for '14 --

16 THE COURT: I realize that's -- what you just asked
17 for is not what I just asked you. I asked you what's wrong
18 with that.

19 MR. KESHAVARZ: So the issue is when he found out
20 about the judgment, that's the issue about his emotional
21 distress damages. If there's a judgment he didn't know about
22 that obviously is going to contribute to his emotional
23 distress. The date that he found about the default judgment
24 according to Page 11 of the complaint is on or about June 29,
25 2015. So that's why I'm saying in the letter if there's

1 anything relevant it would be his financial status on June 29,
2 2015. So to find out your financial status you don't -- I
3 don't know if you need bank statements from '14 -- I don't
4 know if you need any bank statements. Excuse me. Tax returns
5 for that period of time particularly three years back.

6 Bank statements he might have an issue about the
7 total amount of money in the bank. He doesn't have a right to
8 checks and what the checks are written for but if there's an
9 issue about cash on hand that's more narrow. That's not what
10 they ask for. And if there's an issue about the amount of
11 other debt he has in credit cards that doesn't require going
12 back before June 29, 2015.

13 In terms of other debts, this is a major concern.
14 Debt collectors, typically at trial or in deposition, they
15 beat up consumers in the case law -- in the case law it's
16 called the debt beat argument. You owe all this money, you
17 shouldn't be protected by the FDCPA. That's the argument debt
18 collectors make constantly at trial and in depositions to beat
19 up the debt -- the consumer and the footnote in one of my
20 cases -- in my letter I cite the cases that say that's
21 inappropriate for --

22 THE COURT: I'm sorry but I'm not sure how much
23 beating up or what the case law says. Remember, we're talking
24 discovery here, not what Judge Daniels allows in the trial. I
25 mean this might be a motion in limine issue. I don't know --

1 I mean I don't know what they'll find. I don't know whether
2 it's going to be probative or relevant to a trial issue but
3 the argument is is that at least in the worst case scenario
4 you might be so poor that it's a drop in the bucket or you
5 might be so well off that it doesn't make any difference. I
6 mean why not -- I don't know the judge would say well, you
7 know, you can -- the judge might in fact say they're entitled
8 to know this much information and no more and he might even
9 tell you let's just stipulate to that, no beating up. But
10 this is discovery.

11 MR. KESHAVARZ: Well, then the time period has to be
12 limited.

13 THE COURT: We'll talk about limitations but that's
14 why I asked you what's -- as I see it defense counsel has said
15 look, we need to know what the situation is and I like most
16 people know that debt is not more [inaudible] in that sense.
17 If you have a large debt in June of 2015 that's probably not
18 going to change between June and July of 2015. You got me on
19 that. Anything wrong with that?

20 MR. KESHAVARZ: I'm not sure I exactly followed,
21 Your Honor.

22 THE COURT: Well, you said the scope and look, let's
23 take credit card debt for example. If I owe American Express,
24 let's say I'm one of the people who doesn't pay off
25 everything. If I owe them \$50,000 in my June statement and

1 you get my July statement you pretty much have my picture,
2 won't you? Does anybody -- anybody want to disabuse me of
3 that notion? Not that you will necessarily be successful but
4 I want you to put it on the record.

5 MR. LICHTMAN: Yes. If I may, Your Honor. I don't
6 disagree with that principally at all. I think we might need
7 a few more data points than just those two but I would agree I
8 don't need every month of every statement for the entire
9 period. What we asked for was basically the 18 months before
10 and the 18 months after the plaintiff learned of this
11 judgment. So I don't think we were overreaching in the first
12 instance. That said, I'm happy to narrow it. Your Honor's
13 point is well taken.

14 We might suggest something like year end 2014, June
15 30, 2015 which is when he learned of the debt, year end 2015,
16 something like that so we have three data points. Again, the
17 goal here is not burden. The goal here is to really just find
18 out what the picture looked like in the relevant time frame.
19 I'll be quiet now. Thank you, Your Honor.

20 THE COURT: Well, we don't seem to have a basic
21 disagreement. There real question is what does one need to
22 get a picture of the defendant -- the plaintiff, during the
23 relevant time period. As I understand from the plaintiff, he
24 found out in June of 2015.

25 MR. KESHAVARZ: Yes.

1 THE COURT: Okay.

2 MR. KESHAVARZ: And I believe the cut off should be
3 the date that he vacated the judgment.

4 THE COURT: Which is when?

5 MR. KESHAVARZ: It's in the complaint. About three
6 months later. I can give you an exact date, Your Honor.

7 MR. LICHTMAN: Well, that I disagree with, Judge.

8 THE COURT: Why?

9 MR. LICHTMAN: Because the cutoff should be the date
10 on which the plaintiff is ceasing to claim emotional distress.
11 So if he's claiming a period of emotional distress that went
12 from June -- from the day he learned about it to this moment
13 well, then I'm entitled to ascertain all the stressors in his
14 life that are alternative sources of the emotional distress.
15 If we're going to agree that the emotional distress ended --

16 THE COURT: Have they been deposed?

17 MR. LICHTMAN: Not yet, Judge.

18 THE COURT: Okay. So when you say it was garden
19 variety you're basing that on the complaint.

20 MR. LICHTMAN: And plaintiff has acknowledged that.
21 There's no -- there's not going to be any kind of psychiatric
22 records, purely garden variety emotional distress and if I'm
23 wrong I'm sure Mr. Keshavarz will correct me right now.

24 MR. KESHAVARZ: That's correct, Your Honor.

25 THE COURT: Okay. So I'm a bit intrigued about

1 what -- walk me through the -- just on the debt issue what is
2 your theory of -- let us say 2016 or 2017, what's the theory
3 there as to why that would be relevant and how?

4 MR. LICHTMAN: Your Honor, I'm reading from the
5 plaintiff's second amended Rule --

6 THE COURT: Tell me why the limitation -- I take it
7 from the way you said it your time limit would be up to the
8 present.

9 MR. LICHTMAN: Let me explain exactly why, Judge,
10 yes. In the plaintiff's amended, second amended Rule 26(a)(1)
11 disclosures the plaintiffs identifies the computation of each
12 category of damages and he specifically says, and I'll find it
13 in one second.

14 [Pause in proceedings.]

15 MR. LICHTMAN: "Mr. Guzman's damages continued after
16 the dismissal and continued to this day. From the day he
17 learned of the sewer service judgment until today he still
18 thinks about. During the -- "

19 THE COURT: I thought that's what it was something
20 like. Okay. Let's be practical on this from both sides. I'm
21 trying to imagine the questioning here since the only thing
22 that he's going to have in evidence, that either side is going
23 to have in evidence is his financial situation at the time he
24 finds out about the debt. He's not saying -- he's not going
25 to be able to claim that anything is causing him any stress

1 other than the continuation of -- so the jury doesn't have
2 anything to base that on, do they?

3 MR. LICHTMAN: That's exactly -- you're exactly
4 right, Judge, and here's what my cross-examination would
5 ideally be.

6 THE COURT: Yes.

7 MR. LICHTMAN: You are claiming that you were
8 suffering emotional distress from the date you learned of this
9 to today, right, yes. You can't sleep, you can't eat, you
10 can't play the violin, isn't that right. That's all right,
11 yes. But isn't it also true that you owe this guy \$100,000
12 and you owe this guy \$20,000 and you -- or that guy \$40,000
13 and you got fired from your job because you were drunk and you
14 got arrested for -- whatever. You got arrested for running a
15 red light and you had your car totaled by -- that's all
16 relevant and the jury then says -- maybe it wasn't just this
17 \$80,000 debt that caused this gentleman to have trouble
18 sleeping.

19 THE COURT: I understand all that but what's the
20 damage that they're going to assume at the point that the
21 plaintiff says well -- here's the [inaudible] cross-
22 examination goes and he says after you found out about the
23 debt there wasn't anything more about this situation that
24 caused any more harm to you, is there, because that was over.
25 At that point you knew there was no debt. So if there's

1 anything that occurred after that that caused you stress it
2 wasn't this, was it.

3 MR. LICHTMAN: Yes, it was. I think about it every
4 day, Your Honor. I think about it every day.

5 THE COURT: And if he says that what is the jury --
6 you understand, all of this seems to be theoretical because if
7 you -- if that's the argument that you're having with him on
8 the stand the jury still has no basis for this because it's
9 all in his mind at this point.

10 MR. LICHTMAN: Well, but Judge, that should
11 eviscerate the claim in its totality.

12 THE COURT: How does it eviscerate something that
13 doesn't actually exist? Because he's basing it on something.
14 It's just his statement. He's not saying anything that they
15 can objectively look at. If there's nothing they can
16 objectively look at --

17 MR. LICHTMAN: But, yes, Your Honor, you're a -- but
18 that means I'm entitled to summary judgment on his claim
19 because all he's going to have, all he's going to be able to
20 say is I was very upset, I'm still very upset, please give me
21 money and I'm entitled to say I --

22 THE COURT: No, he's going to have the period of
23 time in which he was uncertain.

24 MR. LICHTMAN: Yes, he's going to say I was very
25 upset in that period and I'm still upset. I'm still to this

1 day upset. I can't sleep. I can't eat. That's what he said
2 in his disclosures, Your Honor.

3 THE COURT: Okay. So when you're asking this --
4 look, I understand the lawyers think that everything is some
5 kind of a smoking gun and he says okay, I didn't have any of
6 these other stresses in your life, then how is the argument
7 going to be.

8 MR. LICHTMAN: He says that he didn't have any?

9 THE COURT: Right. Then what are you going to --

10 MR. LICHTMAN: Then I won't ask the question but
11 we're talking about --

12 THE COURT: Then what you've just said, how does
13 that -- what's the relevance to the argument that you just
14 made if there are no other stresses in his life?

15 MR. LICHTMAN: Just like -- let me clarify for one
16 second. Let's say Your Honor says Mr. Balber, you're right,
17 I'm going to order -- I'm going to compel the production of
18 documents and it turns out there's nothing.

19 THE COURT: Right.

20 MR. LICHTMAN: He had no debt, he had a happy go
21 lucky life.

22 THE COURT: That's right.

23 MR. LICHTMAN: I'm going to have a much shorter
24 cross-examination at trial. I get that. But all we're
25 talking about --

1 THE COURT: But you just -- I thought you said that
2 you'd have a motion for summary judgment.

3 MR. LICHTMAN: Well, that's my view. I think if he
4 can't articulate any tangible basis to claim emotional
5 distress, yes, but I don't know what he's going to say. I
6 haven't deposed him yet and he hasn't articulated it yet.

7 THE COURT: Do you want to respond to this? Well, I
8 think a lot of arguments that I get for discovery are really
9 much ado about nothing but I like to hear people make their
10 arguments.

11 MR. KESHAVARZ: Well, as to summary judgment I don't
12 know if that's here or there. You can't have summary judgment
13 based on if you believe he has damages or not. He testifies
14 as to his emotional distress damages and a jury gets to
15 decide. I don't know how that goes to summary judgment. I
16 don't know if that's particularly relevant as to the issue
17 here.

18 If they are entitled to documents this is my
19 suggestion. They are entitled to what his financial condition
20 was like when he found out about the judgment. They don't
21 get -- they get the total balance on the bank account. They
22 get the total balance per month, the total balance due on a
23 debt -- on the credit cards. They don't get to get all the
24 checks and say well, you --

25 THE COURT: I think counsel is saying something

1 different. Let's -- it goes without saying that we're talking
2 about what's a reasonable limit on the financial information
3 but he's saying when you limit it -- well, let me just be
4 clear.

5 The defendant -- you're talking about the limits on
6 the financial information or limits on all information about
7 his emotional state?

8 MR. LICHTMAN: I'm sorry. You're asking me, Your
9 Honor?

10 THE COURT: Yes.

11 MR. LICHTMAN: I'm not looking -- I mean limitations
12 in terms of what discovery I'm seeking?

13 THE COURT: Well, we were talking about financial.

14 MR. LICHTMAN: Correct.

15 THE COURT: And we just had a discussion in which
16 you were talking about well, you know, what if his house
17 burned down, certain other things. Is that a discovery
18 dispute you're having?

19 MR. LICHTMAN: We do not have that discovery
20 dispute, Judge, no. The only documents I'm looking for relate
21 to the financial issues.

22 THE COURT: So how does what you said relate to the
23 limitation on the financial issues?

24 MR. LICHTMAN: It's relevant because it's -- what
25 I'm articulating to Your Honor is what the alternative

1 stressors could be. At his deposition I certainly plan to ask
2 him all those questions but I don't need anything from Your
3 Honor today in that regard. The thing I need in this regard
4 today is the documents that evidence his financial condition
5 because I can't ask that question openly. I can certainly ask
6 him did you have --

7 THE COURT: So the presentation you made about your
8 cross-examination wasn't really about the financial stuff?

9 MR. LICHTMAN: It was -- in large part it was about
10 the financial stuff, Judge.

11 THE COURT: So tell me --

12 MR. LICHTMAN: It's all the other -- let's limit it
13 to financial. The financial stuff --

14 THE COURT: Just to be clear, at the time we were
15 talking about the temporal limit of the financial information
16 and that's when you went into why it shouldn't be limited to
17 what the plaintiff said and you told me about your cross-
18 examination --

19 MR. LICHTMAN: Yes.

20 THE COURT: So why should you get financial
21 information -- are you saying up to the present point?

22 MR. LICHTMAN: That is where we started this, Your
23 Honor. I apologize for the securities detour but we started
24 from what the plaintiff said in his Rule 26(a)(1) disclosure,
25 and that was that his emotional distress continues to this

1 day.

2 THE COURT: Yes.

3 MR. LICHTMAN: And he's attributing that emotional
4 distress to this day to this debt collection action. So as a
5 result I'm entitled to explore the other financial stressors
6 in his life that exist up to this day. So I can say well,
7 this debt was vacated in 2015, you're still very upset. I'm
8 sorry to hear that but isn't it also true that you've incurred
9 another \$25,000 in credit card debt and isn't that what's
10 really bothering you, not the \$8,000 debt that was vacated two
11 years ago. To me that seems perfectly permissible.

12 THE COURT: Now that we have that clarification,
13 what do you have to say to that?

14 MR. KESHAVARZ: If it goes beyond the date of the
15 vacating of the judgment which is October 2015 then the
16 request would be the date -- the financial information close as
17 of the date of the settlement with the other defendant because
18 that settlement is confidential. So I wouldn't want
19 disclosures to go into the amount of the confidential
20 settlement agreement.

21 So the request is from the date he found about the
22 suit to the vacating of the judgment. If it goes beyond that
23 I understand the argument as to the emotional distress because
24 he's afraid they're going to garnish him again.

25 THE COURT: When was that?

1 MR. KESHAVARZ: When was what?

2 THE COURT: Vacation of the judgment.

3 MR. KESHAVARZ: October 5, 2015.

4 THE COURT: I think he's making a different
5 argument. Am I to understand -- well, I'm not quite sure.
6 Your client is saying that he -- the damage he's claiming from
7 the defendant goes from what time to what time? From --

8 MR. KESHAVARZ: It's continuing. He is afraid
9 they're going to do this again because they lied in court
10 pleadings and affidavits. I believe his testimony is going to
11 be yes, I won in court but they lied to get to this point, I'm
12 afraid they're going to do it again. That's what he's going
13 to testify to I believe.

14 THE COURT: What's wrong with the argument of
15 defense counsel that well, although theoretical I admit but
16 again this is discovery. He says if you're claiming that
17 there is -- there is continuing stress. If you put that in
18 issue then they have a right to show that there are other
19 things that are stressing your life at that point including
20 financial. If you want to have it both ways, that is you want
21 to say that -- if you want to have it one way saying that the
22 damage continues then it opens it up to the defendants to look
23 not only at other things that are happening in your life
24 because if the jury buys what you're saying that there is
25 continuing harm I don't know they're going to ascribe that to

1 the period from the time of the -- the accrual to the
2 vacation. Are they going to ascribe that from the time of the
3 accrual to the time of the trial? So their argument simply is
4 well, if you want to have it one way you can't limit the
5 discovery the other way.

6 MR. KESHAVARZ: There's some validity to that
7 argument. I'd have to stipulate to -- I'd have to --

8 THE COURT: So you're not willing to say that your
9 pain and suffering or whatever it is was -- is limited to the
10 period of time when they vacated the judgment.

11 MR. KESHAVARZ: There is some strength to their
12 argument because his emotional distress continues. Then the
13 issue would be when the date of cutoff would be. If it's not
14 the date of the vacating I'd want it to be the date of
15 settlement with the other defendant because I don't want to
16 get to the issue of getting into confidential settlement.

17 THE COURT: Why would they have to get into
18 confidential settlement information?

19 MR. KESHAVARZ: Well, because his bank statement
20 will go up on the date of the statement -- of the settlement.

21 MR. LICHTMAN: But that's --

22 MR. KESHAVARZ: So that would be --

23 MR. LICHTMAN: That's irrelevant, Judge.

24 THE COURT: Well, this is a -- why would that -- are
25 you saying that would violate the --

1 MR. KESHAVARZ: The confidentiality.

2 THE COURT: What does the confidentiality allow you
3 to do?

4 MR. KESHAVARZ: Can't disclose the amount of the
5 settlement. So one concern would be --

6 THE COURT: Who is the settlement with?

7 MR. KESHAVARZ: Mel Harris.

8 MR. LICHTMAN: Another defendant in this case who's
9 now not a defendant and we have a protective order.

10 MR. KESHAVARZ: So I guess the request would be if
11 they continue after the date of the vacating that it be up to
12 -- at least in terms of bank statements -- up to the date of
13 the settlement with Mel Harris which is a few months ago
14 because I don't want them to make an end run around a
15 confidentiality agreement where they can't get to the amount
16 of the settlement by saying they have the bank statement.

17 THE COURT: Why do you need something beyond -- it
18 was a couple of months ago, right?

19 MR. LICHTMAN: He's claiming, the plaintiff is
20 claiming emotional distress to this day to today and he's
21 going to continue to claim it through trial. Now, I have my
22 views about it. The jury --

23 THE COURT: Well, wait a minute. So let's say you
24 get the bank statement and it shows that it went up \$50,000,
25 are you going to be able to ask him that in cross?

1 MR. LICHTMAN: I can ask him -- I could certainly
2 ask him at his deposition. Mr. Guzman, you're claiming that
3 you still wake up at night because you're worried about this
4 \$7,000 -- this \$8,000 debt. Yes, I can't sleep any more. You
5 have \$50,000 sitting in cash in your checking account. Does
6 that help you sleep a little bit.

7 THE COURT: How does that help you. If you can't
8 use it at trial, what's the benefit of asking him?

9 MR. LICHTMAN: Judge, I don't know what I can use at
10 trial.

11 THE COURT: Well, if you can't convince me you can
12 use it at trial I don't see why it's relevant in discovery.

13 MR. LICHTMAN: Well, let me tell you why I think
14 it's relevant in discovery and why I can use it at trial.

15 THE COURT: We know that he got a settlement and he
16 got money. So you can ask you didn't you get a settlement and
17 didn't you get a bunch of money. But the amount the
18 settlement, tell me why that's relevant and why you'd be able
19 to use it at trial.

20 MR. LICHTMAN: Let me tell you first -- let me
21 answer your question first and then I want to ask a rhetorical
22 question why is there some magic to this settlement agreement
23 that is confidentiality when we have a protective order in the
24 case. I don't understand even that premise but let me answer
25 your question first, Your Honor.

1 He is claiming, and I said it several times so I
2 don't want to repeat myself, but he's claiming emotional
3 distress to today. The emotional distress is --

4 THE COURT: I get that. Again --

5 MR. LICHTMAN: Based upon --

6 THE COURT: Why does the specific -- are you going
7 to be able to ask -- if you're not going to be able to ask the
8 specific amount at trial --

9 MR. LICHTMAN: I can. Let me do it -- if I may,
10 Your Honor, yes. I'm going to do it exactly how we do it at
11 trial which is he claims he had emotional distress when he had
12 this \$8,000 debt. His financial condition changes
13 dramatically whether it's by settlement, whether it's by
14 winning a lottery, whether it's by inheriting money from his
15 great aunt. Okay. Now his mental condition is affected by
16 that.

17 THE COURT: I agree so far.

18 MR. LICHTMAN: I can ask him at trial. So isn't it
19 true that you were very upset when you had \$8,000 debt with no
20 money and it's your testimony you're every bit as upset when
21 you have \$1 million in the bank still thinking about the
22 \$8,000 debt. Isn't the jury allowed to have its own view of
23 whether that's credible?

24 THE COURT: Are you going to be able to tell him
25 it's \$1 million?

1 MR. LICHTMAN: I have no idea what it is, Judge.
2 Yes, of -- I'm not going to -- I may not -- what I'm not going
3 to be able to say, Judge, is and you got that money as a
4 result of a settlement with another defendant, didn't you.
5 That I can't do. But I can say on X date you had \$3.00 in
6 your bank account and on Y date you had \$1 million in your
7 bank account, right. Now you have the \$1 million, doesn't
8 matter where it's from, doesn't that change your emotional
9 state. You're telling this jury that you're every bit as
10 upset today with the \$1 million in your bank account with the
11 fear of a \$8,000 judgment as you were in July 2015 when you --

12 THE COURT: I guess now what you're telling me is
13 that I need to look at the confidentiality order to see if
14 this -- because look, from my point of view you can't do an
15 end round because you're clever, and that's what that would
16 be. Look --

17 MR. LICHTMAN: Thank you for calling me clever,
18 Judge, on the record.

19 THE COURT: You can't -- you can't -- if you can't
20 disclose it you can't disclose it by saying we can't tell you
21 what the -- we can't tell you how much you got in the
22 settlement but his bank account rose by \$150,000. That
23 just --

24 MR. LICHTMAN: I now understand Your Honor's
25 concern. Let me put this on the record. Okay. I have no

1 intention of ever saying in front of a jury or using for any
2 improper purpose the source of the settlement monies that Mr.
3 Guzman apparently received from the other defendants. An
4 officer of the court, I'm standing in front of you, it's on
5 the record. Not my intention at all. I'm not being clever
6 that way.

7 I am being clever, however, in that there's another
8 source of revenue that this plaintiff received at a time when
9 he's still claiming emotional distress for \$8,000 debt. I
10 don't see why it's different from inheritance or winning the
11 lottery. It's the same thing.

12 THE COURT: Well, it's the same thing momentarily
13 but if there's a -- who signed this protective order by the
14 way?

15 MR. LICHTMAN: We all did. We all signed it.

16 THE COURT: I mean was there a judicial signing?

17 MR. LICHTMAN: Yes, it was so ordered by the court.

18 THE COURT: Who?

19 MR. LICHTMAN: I thought it was Your Honor but I
20 could be mistaken. It was Judge Daniels. I'm sorry.
21 Standard form SDNY protective order.

22 THE COURT: Standard form when it gets signed by the
23 court that makes it a little different. There's a reason why
24 people ask to sign things.

25 MR. LICHTMAN: Absolutely, Judge.

1 THE COURT: Do you know where the confidentiality,
2 where it talks about --

3 MR. KESHAVARZ: Your Honor, the confidentiality is
4 not in the protective order. The confidentiality is in the
5 settlement agreement between the parties.

6 THE COURT: Was that so ordered by Judge Daniels
7 too?

8 MR. KESHAVARZ: No.

9 THE COURT: It's a private settlement?

10 MR. KESHAVARZ: Yes.

11 THE COURT: But it's got to have an out for courts.

12 MR. KESHAVARZ: If they make a motion and it's
13 ordered to be produced obviously it has to be produced but
14 they can file such a motion and I have a lot of case law as to
15 why they can't get it but that's not what we're here for
16 today.

17 MR. LICHTMAN: We are here for it today. This is
18 absolutely on the list.

19 THE COURT: Okay, Counsel. Counsel --

20 MR. KESHAVARZ: I mean nothing in the papers today
21 has anything to do with compelling a confidential settlement
22 agreement and I can't make a response to that. There's a lot
23 of case law that it's not relevant until after a judgment and
24 for the possible issue of an offset but if they want to file a
25 motion on that I'd be glad to respond to that.

1 MR. LICHTMAN: Judge, may I interrupt? Mr.
2 Keshavarz made a motion to quash on this issue pending before
3 this court right now.

4 THE COURT: Counsel.

5 MR. KESHAVARZ: So the concern at this point absent
6 them getting a court order to remove the protective order, to
7 remove the confidentiality is exactly what Your Honor
8 suggested is to get around the fact that there's a
9 confidentiality agreement. If they want to move for an order
10 to disclose the amount then they can do that and I can respond
11 but I think Your Honor is exactly right as to going around.

12 THE COURT: Let's hear defendant's argument on this.

13 MR. LICHTMAN: Let me be clear where we started with
14 this. Mr. Keshavarz stood up and said I don't want to produce
15 the bank records over the last few months because they're
16 going to reflect the settlement with this party. Well, that's
17 all we're talking about. I want the bank records. If I can
18 divine the amount of money that he settled for, that's not my
19 problem. I'm not asking at this moment for a copy of the
20 settlement agreement, Judge.

21 THE COURT: Okay. Counsel, Counsel, you -- no
22 matter how you slice this it's still -- it's not going to take
23 rocket science to figure out what happens in a circumstance
24 like that and I'm still having difficulty seeing how this
25 doesn't accomplish something that ought to be accomplished a

1 different way by just saying -- by just -- this is like the
2 lipstick on a page kind of thing. You can look at my account
3 and you'd know when I got certain lump sums. So I fail to see
4 how that doesn't do indirectly what you might not be able to
5 do directly, and if you -- and if there's direct way to do it
6 you ought to be doing it the direct way because the ultimate
7 result will be the same.

8 MR. LICHTMAN: Let me take a shot at this if I can,
9 Your Honor. I understand your point fully but let me start
10 with this premise. What is sacrosanct, and I ask this
11 obviously rhetorically, what is sacrosanct about this
12 settlement agreement with another party in this case. That's
13 the only basis I'm hearing for me not learning the number that
14 he settled for.

15 But let me start where we started. This plaintiff
16 has claimed that to this day, this very moment he continues to
17 suffer emotional distress as a result of a judgment for \$8,000
18 entered against him in July of 2015. That's his claim, his
19 damages claim.

20 So as a result my ability to look at all the other
21 pieces of the economics of his life continue until this day.
22 So he has a couple of choices in my view, Your Honor. He can
23 say I'm actually not claiming that he continues to have
24 emotional distress to today. I'm going to cut off his
25 emotional distress on the date I settled that case and he got

1 that money. That's a good response. Or there's no magic
2 about him having settled the case that should preclude me from
3 knowing that information relative to any other information
4 about sources of funds or money he got. It's not my choice
5 that he's continuing to suffer emotional distress for a claim
6 up to March 2017 when the judgment was entered almost two
7 years ago.

8 THE COURT: Well, you rephrased it but I don't think
9 you changed the needle here. I mean essentially the argument
10 comes down to this. And you asked a question of what's
11 sacrosanct about the -- any confidentiality agreement. I
12 mean a normal reservations and that is if a court orders it or
13 you're subpoenaed or otherwise that still puts the court in
14 it. Once the court is in it then you're dealing with whether
15 or not you're able to demonstrate to the court that there's a
16 reason to disclose the information.

17 Now, you may think that it's simply the same thing
18 disclosing it during -- in his motion to quash or his motion
19 to -- I guess in this case your motion to compel but it seems
20 to me that's an indirect way of getting the court to rule on
21 an issue that the parties haven't really briefed as to what --
22 which is really the question that you asked. Why is it
23 sacrosanct.

24 MR. LICHTMAN: And we did subpoena it, Judge, and
25 Mr. Keshavarz has filed a letter with this court asking to

1 quash it. Now, it's not fully briefed yet but it's not as if
2 this is some big surprise. He filed it with this court on --
3 it looks like March 6th. So I mean I understand it's not
4 fully briefed but for Mr. Keshavarz to say oh my goodness, I'm
5 not prepared on this is just a little bit disingenuous.

6 THE COURT: I'm not concerned about whether or not
7 he says he's prepared. The question is whether or not the way
8 it's teed up on a motion -- I mean frankly right now I don't
9 have the -- I don't have the arguments on why the
10 confidentiality is even there. So how do I even determine
11 whether or not it's appropriate to issue an order saying that
12 the information that is inherent in the agreement ought to be
13 disclosed here?

14 MR. LICHTMAN: Your point is well taken, Your Honor.
15 Respectfully let me suggest something if I can. Why don't we
16 corner off the issue of the settlement agreement and whatever
17 economic implications there are of the settlement agreement.
18 That's a letter that Mr. Keshavarz filed with the court.
19 We'll put in a response. When Your Honor wants to hear from
20 us again you'll hear from us again when it's fully briefed.
21 I'd like to with your permission do that. I understand Your
22 Honor's position perfectly well and it makes good sense. If
23 we can just get back to everything else other than that piece
24 of the equation of the financial documents we've asked for.

25 THE COURT: Is a deposition scheduled at all?

1 MR. KESHAVARZ: No.

2 MR. LICHTMAN: Not yet, Judge. We're waiting for
3 documents.

4 THE COURT: Okay. So we need to expedite this. So
5 here's where I stand. It does seem to me that while I'm not
6 sure that in the scheme of the way jurors will process this
7 someone saying that they have continuing emotional stress for
8 something that happened a while back is something that's going
9 to be given a significant weight once the stressor
10 specifically is removed, I mean this -- I don't think you're
11 going to get -- well, okay.

12 So since the plaintiff is offering continuing --
13 asking for continuing recompense for that stress, were it not
14 for the confidentiality agreement then the defendants would be
15 entitled to financial information up to the -- at least up
16 until the end of discovery and so I think limitations before
17 that period of time I think probably the quarters in -- the
18 quarterly statements beginning in the beginning of 2015
19 frankly ought to be sufficient. So at least that ought to be
20 teed up while we figure out what's going to happen with the
21 settlement agreement.

22 Now, that's just the -- now, that's -- that's bank
23 statements and credit card statements. So while in theory you
24 might want to go back further given the circumstances here I
25 think since this took place in the middle of the year, the

1 beginning of 2015 seems to be a reasonable starting point
2 given the nature of the claim here.

3 Now, as to the defendant's -- the other issue that
4 was brought up was income. Exactly what was the plaintiff's
5 position with respect to income?

6 MR. KESHAVARZ: Income taxes?

7 THE COURT: Well, income -- I say income because
8 some people will say give us your W-2s, some people will say
9 give us your income tax returns. Different people show their
10 income in different ways. On any and all of those what's your
11 position? What's the defendant's position? What do you want?
12 You want everything?

13 MR. LICHTMAN: This could be done simply, Your
14 Honor, I think with the temporal limitation Your Honor imposed
15 which is -- which makes good sense. I would suggest just the
16 2015 and 2016 tax returns which will encompass any source of
17 income. So it's literally two documents that we would need to
18 satisfy what we're looking for.

19 THE COURT: Well, plaintiff's position on this?

20 MR. KESHAVARZ: Well, tax returns are governed to a
21 higher standard than some of the other financial information.

22 THE COURT: I understand that. The Second Circuit
23 has made that clear. But what's your position?

24 MR. KESHAVARZ: The second issue would be the income
25 for the period beginning January -- June 2015 as opposed to

1 the income during that time. So those are the two issues.
2 One is -- I think you get a higher burden for tax returns and
3 two, it would be -- it should be limited to income received
4 from January 2015 up until the date of the settlement. June
5 2015.

6 THE COURT: Is this also limited to the
7 confidentiality issue?

8 MR. KESHAVARZ: Well, it would be in terms of trying
9 to get -- if the tax returns that he's going to file raise the
10 issue about --

11 THE COURT: So wait a minute. When was the
12 settlement? That wouldn't be a 2016 tax return; right?

13 MR. LICHTMAN: It would be 2016 tax return but I
14 would expect that to be a non taxable settlement, Your Honor.
15 I can't imagine how that would be taxable. I'm not an
16 accountant or a tax lawyer but I've done a lot of this stuff
17 long enough. So Mr. Keshavarz I would suspect knows ever
18 better than I do.

19 THE COURT: Well, you are right about income tax
20 returns as a high standard but if I understand correctly the
21 only line we're interested in is taxable income.

22 MR. KESHAVARZ: I don't know. He asked for the full
23 return. I don't know what he's looking for.

24 THE COURT: Well, he may have said that but that's
25 why lawyers compromise. You tell him look, if you want to

1 know how much taxable income he had which doesn't even impact
2 on the settlement, if it does then -- I'm not a tax lawyer.
3 But that's what redactions are for. You could certify this is
4 your tax return, here's line 33 which shows my taxable income.
5 I don't think that -- I mean I understand the Second Circuit
6 doesn't want tax returns to be -- they want a higher standard
7 but for some people the W-2 suffices because we know -- if
8 you're working for the government you generally don't have
9 another employer.

10 MR. KESHAVARZ: And it may well be that he only
11 has -- his only income is from a W-2. I don't know. I
12 suspect that's the answer. I suspect that's true.

13 THE COURT: But the general principle of the income
14 we've already established given the nature of the claim is
15 going to be relevant for discovery purposes. Again, I have my
16 concerns about what happens at trial but that's Judge Daniels'
17 worry.

18 All I'm ruling is that they're entitled to
19 information concerning his income, earned income -- not earned
20 income. Taxable income during those periods of time. If --

21 MR. KESHAVARZ: But line on the tax return that says
22 taxable income.

23 THE COURT: Well, look, from my point of view if
24 your client is willing to swear that he only had income and it
25 was on a W-2 and he shows the W-2s, if people are willing to

1 swear I take that very seriously. I always tell lawyers to
2 tell their clients that if they swear to something this
3 litigation might be the least of their worries. I've had
4 people -- there are cases where people have sworn to things in
5 a civil case and then found themselves in a criminal case.
6 But I don't know what the answer is. The idea is that the
7 defendant wants to know about the taxable income. It might be
8 simpler to do a redaction because that's just -- it eliminates
9 a lot of questions. It doesn't divulge things about the
10 personal life of the person and what other things might be
11 happening. It just says what -- how much money are you
12 getting in. I think that's -- frankly I think that's the
13 simplest way to do it and it eliminates follow ups for me.

14 I like to have -- not that I have so much work to
15 do. This is actually the only case I have and that's why I
16 get to spend time with you.

17 MR. LICHTMAN: We feel very privileged, Your Honor.
18 Thank you.

19 THE COURT: Okay. But you understand my -- what
20 else did you have for -- do you understand that you -- I guess
21 you owe me a brief on the confidentiality issue.

22 MR. KESHAVARZ: Your Honor, if I may on that.

23 THE COURT: Yes.

24 MR. KESHAVARZ: I think he's getting our two cases
25 mixed up. There's a motion to quash a subpoena to my client's

1 bank that's unopposed.

2 THE COURT: Is that the Banco Popular? That was
3 going to be my next issue.

4 MR. KESHAVARZ: That has been -- there's been no
5 opposition filed and the deadline to file an opposition has
6 passed. He -- I believe present counsel is talking about a
7 different case in the Eastern District with the same attorneys
8 and similar -- and LR Credit and Mel Harris and so forth and
9 that is when they tried to subpoena one of the former
10 defendants, Mr. David Waldman of the Mel Harris firm. That's
11 not in this case. So I think -- I suspect he's getting his
12 case --

13 MR. LICHTMAN: We'll tee it up. If it's not teed
14 up, Judge, we'll tee it up.

15 THE COURT: Okay.

16 MR. LICHTMAN: The issue of Banco Popular --

17 THE COURT: Understand that if we're talking about
18 anything in this case my idea is that we're all expedited.
19 We're not doing this two weeks kind of stuff.

20 MR. LICHTMAN: We'll get something into you tomorrow
21 or Friday, Your Honor. Tomorrow is Friday. So Friday.
22 You'll get it tomorrow or Friday. I can guarantee that.

23 THE COURT: Tomorrow is Friday.

24 MR. LICHTMAN: I'm joking.

25 THE COURT: Either one. Right?

1 MR. LICHTMAN: The Banco Popular issue is I think
2 somewhat subsumed by what we've already talked about. I think
3 Your Honor has ruled that we're entitled to that information
4 from this third party to the extent it exists. We are -- our
5 understanding is that Banco Popular with a credit card vendor
6 with whom Mr. Guzman had an account and/or a bank account. So
7 I can't see any reason for the plaintiff to need to quash that
8 subpoena.

9 THE COURT: Except that I thought -- I thought this
10 had to do with the possibility that there was a mistake made.

11 MR. LICHTMAN: It's both issues, Judge.

12 THE COURT: I certainly analyze that one a little
13 differently because I needed you to convince me that that's
14 not just speculation. I mean any time -- this could happen in
15 almost any case and somebody can say well, maybe it was just a
16 mistake and this happened and this really was something else.

17 MR. LICHTMAN: That was really the secondary
18 argument, Your Honor. The primary argument is the argument
19 that we've been having which is about our entitlement to know
20 of the plaintiff's financial condition and other potential
21 stressors. So it's -- in my view it's been subsumed by what
22 we've argued already which is that we're entitled to know from
23 a third party whether Mr. Guzman owed it money or had a bank
24 account.

25 THE COURT: So we're talking about the same temporal

1 constraints.

2 MR. LICHTMAN: Exactly, Your Honor. We're happy --
3 Banco Popular hasn't objected but I'm happy to limit with
4 Banco Popular to the same time period that Your Honor has
5 ordered vis-a-vis the plaintiff.

6 MR. KESHAVARZ: If I may say. They filed on
7 opposition. The motion was filed on the 6th. The deadline to
8 file an opposition has passed. I don't believe they should be
9 able to just get up and stand up and say oh, we should be able
10 to quash at least -- deny their motion to quash --

11 THE COURT: Well, what they're seeking from Banco
12 Popular is -- aside from this issue whether -- I remember that
13 had to do with 2007 but now we're talking about a different
14 temporal scope which has to do more with the question of the
15 stressors on the plaintiff.

16 MR. KESHAVARZ: The time period requested in Item 2
17 of their subpoena is January 1, 2005 to December 31, 2010.

18 THE COURT: Right.

19 THE COURT: I think inherent in what I've said is
20 obviously that time period is not covered by anything we
21 discussed already. So if the defendants want something -- I
22 had thought that the distinction part about this particular
23 subpoena was that it had something to do with the notion that
24 there may have been something that happened at Banco Popular
25 which this had been -- the debt here had been confused with.

1 To the extent that that was the justification that
2 seemed to me to be overly speculative but to the extent that
3 financial information at Banco Popular fits within the
4 temporal scope of what I've said before about the plaintiff's
5 financial situation in or around the time of the stressors it
6 was covered by what I've already said.

7 MR. LICHTMAN: If I may, Your Honor, just back to
8 the prior period. I guess again I go back to the premise of
9 what does the plaintiff care about me subpoenaing a financial
10 institution as to which he may have had an account. What is
11 the -- what is the objection to that because in Mr.
12 Keshavarz's letter he claimed that we are --

13 THE COURT: Okay. The fact of the matter is is that
14 if he has an objection the only question is whether or not he
15 has standing. Why he has an objection we may never get to
16 unless you oppose it. So on this score he is right in the
17 sense that if you subpoena his bank and their third party the
18 bank may not care but if I determine that he has standing
19 because it's his bank account, which is the normal way, he has
20 standing to oppose the subpoena because he -- it could be he's
21 saying it's for harassment purposes or -- any number of things
22 that plaintiffs have alleged in those circumstances. He gets
23 to file a subpoena and then it's a matter of the way the rule
24 operates. If he moves to quash it and there's no opposition
25 from my point of view there's no opposition.

1 MR. LICHTMAN: That's fine, Your Honor. I mean
2 there was no opposition because Mr. Keshavarz took the
3 position that it was encompassed by the pending motion to
4 compel.

5 MR. KESHAVARZ: That's not true. Your Honor, your
6 ruling is your ruling, Your Honor. I'm not arguing with you
7 one bit.

8 THE COURT: Okay. Well, then I guess our work on
9 that is done.

10 Now, let me just -- the last thing I had on my list
11 is that the parties asked for an extension of the discovery
12 deadline and as you know the rules say that for good cause
13 shown. Except for the fact that you both agreed sometimes
14 when I have civil litigation I think if the parties agree
15 that's probably good enough cause because it's good for my
16 agenda. But you didn't really articulate what the reasons
17 were. I know that there -- it seems now that there are
18 certain things that are still percolating but I didn't know
19 that you wouldn't be able to finish by the end of April.

20 MR. LICHTMAN: I think we can, Your Honor. I would
21 suggest that we have a defined time frame for the plaintiff to
22 comply with Your Honor's order today and that we then set a
23 date for his deposition and then I think we're done. So I
24 think April 30th is absolutely doable.

25 THE COURT: What about compliance? I mean some of

1 this is -- I don't know whether the plaintiff has it on his
2 person or he has to go through the banks or what?

3 MR. KESHAVARZ: I'll ask him. If he has it then --

4 THE COURT: It's immediate.

5 MR. KESHAVARZ: Yes, but beyond -- if he doesn't
6 have it I mean --

7 THE COURT: Why don't you -- rather -- look, I'm not
8 in the habit of ordering things without knowing how it's going
9 to work. What I will direct you to do is this. Find out if
10 your client has it and if he doesn't have it within the next
11 week contact the organizations or persons who might have it
12 and give me an estimation in writing about when you expect to
13 get it. I mean, for example, I have online banking. I could
14 get my statements by just signing in and hitting print. I
15 don't know what steps it takes. So rather than ordering
16 something and then having you tell me I'm going to give you a
17 week to tell me what it's going to take. Sometimes it turns
18 out that it really doesn't take as much as the lawyer takes,
19 thinks it's going to take.

20 So a week from today you'll let me know and then
21 I'll issue an order consistent with what you tell me. Again,
22 bearing in mind that we're trying to facilitate this without
23 it being unduly burdensome.

24 Is there something that the parties wanted to raise
25 other than those three years?

1 MR. KESHAVARZ: There are a couple of items. One,
2 I'm going to -- we had finally the deposition of LR Credit
3 last Friday which I've repeatedly noticed since August and
4 there have been --

5 THE COURT: What's the problem?

6 MR. KESHAVARZ: So here's the thing. They finally
7 take their deposition and they finally disclose all these
8 other debt collectors as intermediaries who've been in charge
9 of the fraud against my client. I want to move to amend to
10 add these people that they're just letting me know about. So
11 I anticipate moving for a motion to amend and there's a letter
12 admittedly I filed last night because I was taking the
13 deposition of Samserv finally yesterday. But the request is
14 going to be to file a motion to amend and to file under seal
15 because it's going to attach a lot of documents that they have
16 initially designated as confidential.

17 Now, I've spoken with opposing counsel. I don't
18 believe they necessarily should be confidential but in the
19 first instance I'd like to file the motion to amend and get
20 that on the record under seal and then whether it means under
21 seal is a separate issue.

22 THE COURT: So essentially you want to file a motion
23 to amend. You want to allege that you didn't find out this
24 information until the deposition. You had sought the
25 deposition earlier and therefore you would have asked earlier

1 if you had found out.

2 MR. KESHAVARZ: There are a couple of things on
3 that. One, some of the documents were produced in October.
4 One of the issues is there's no scheduling order as I can look
5 at the docket and the filings and the ECF bounces. There's no
6 scheduling order as to the date to file a motion to amend. So
7 it would be under the lower standard rather than the higher
8 standard.

9 Some of the information came out in the deposition.
10 Some of the information came out in October but I was only
11 able to follow up on the documents when I spoke with LR Credit
12 finally the last week. So one of the issues is adding several
13 new defendants and also based on the testimony there may be
14 additional claims against the existing defendant, frankly LR
15 Credit.

16 THE COURT: You filed this last night asking -- is
17 there going to be a response from the defendants on this?:

18 MR. LICHTMAN: I don't even know what Mr. Keshavarz
19 is talking about other than the fact that I saw the ECF prompt
20 at 10:45 last night. I don't know. I don't know how to
21 respond.

22 THE COURT: Okay. Well --

23 MR. LICHTMAN: We'll look at it. We'll respond or
24 we won't respond.

25 THE COURT: Okay. Understand that while we try to

1 keep on top of things we saw it. We actually looked at it but
2 filing stuff the day before a conference isn't going to get a
3 definitive response from the court.

4 MR. KESHAVARZ: I apologize. The deposition for
5 them was last Friday. Samserv was yesterday and I was remiss
6 in filing it earlier even though a lot of the information came
7 from LR Credit's deposition on Friday. I should have right
8 after the deposition filed a letter but --

9 MR. LICHTMAN: I just want to make sure the record
10 is abundantly clear that Mr. Keshavarz has just said that he
11 learned of these facts --

12 MR. KESHAVARZ: That's not true.

13 MR. LICHTMAN: -- at the time of the deposition
14 because the reality is he's known whatever facts --

15 THE COURT: You can put -- this sounds like you
16 might want to do a response.

17 MR. LICHTMAN: Yes, I think we will, Judge. Thank
18 you.

19 THE COURT: Because you're right that -- well, I
20 don't know that you're right. I think Judge Daniels doesn't
21 generally put in restrictions on when to amend the complaint
22 and therefore it wouldn't be a scheduling order but still
23 we're still late in the process. You still have to justify
24 the fact that you're doing it at this point and you obviously
25 anticipate that trying to say that you recently found out

1 about it is the way to go but the typical thing I get from
2 people opposing it is well, he says he just found out about it
3 but here are the documents we gave him in 2016 where we lay
4 this all out for him.

5 MR. KESHAVARZ: I'm not disputing that. Some of the
6 information was in the documents produced in October but I can
7 only take a deposition to drill down through it last week and
8 I tried to take his deposition since August and I've had like
9 six deposition notices and they object to the deposition
10 notices.

11 THE COURT: I under --

12 MR. LICHTMAN: That's just not true.

13 THE COURT: Counsel, I understand but I just wanted
14 to make it clear that this is not something new. That is
15 somebody says that I just found this out. It's also not new
16 the other side says we already produced it to them. It's
17 going to be a reasonable -- it's going to be a reasonableness
18 determination. Basically what I tell people is look, if I
19 look at it and it would have been obvious to me that there was
20 something there then the defendants will probably win. If
21 it's obvious -- if it's totally oblivious to me then the
22 plaintiffs win and use it somewhere in between.

23 So you'll make your arguments. You'll point things
24 out to me and it's also true about the depositions. I'm
25 getting the sense that you'll disagree as to whether or not

1 the defendants were somehow delayed in making the deposition
2 available and whether or not it was justified in not having
3 the deposition then. There's a question about whether or not
4 you could have insisted on it, whether -- there -- it's not as
5 simple. It's not as difficult as healthcare but it's not
6 simple and I will listen to whatever each of you has to say
7 and we'll determine it but for now we'll do the financial
8 information and you'll tell me in a week what that looks like.
9 You don't have to wait a week.

10 MR. KESHAVARZ: If I may raise a separate issue.

11 THE COURT: Yes.

12 MR. KESHAVARZ: Well, first off, to clarify. The
13 motion last night is only to file the motion to amend under
14 seal. That's the only request. If we get a ruling on that
15 right away I can move on the motion to amend right away.

16 The second thing is the discovery close period. We
17 had agreed to be pushed up 30 days because I couldn't take the
18 depositions until now. So to say that we don't need it is
19 untrue. I had to get the transcript from the depositions
20 which were last Friday and yesterday. I need to get those
21 transcripts and follow up. I know they said a number of
22 things that I want to follow up on either a subpoena to a
23 third party in addition to a discovery demand.

24 So I would request that the court extend discovery
25 as per the parties stipulated in their Docket Entry 119,

1 discovery close date be pushed to May 31, 2016.

2 THE COURT: Well, you're fortunate in this case then
3 because I don't think that if -- if in the end the parties
4 need additional time to clean this up it will happen. I don't
5 think Judge Daniels wants to have a case that's not in shape
6 to go to trial. So there won't be any messes left before it's
7 referred to him.

8 MR. KESHAVARZ: Okay. So as of today though the
9 deadline is as scheduled?

10 THE COURT: The deadline is as scheduled.

11 MR. KESHAVARZ: Thank you, Your Honor. Right now
12 the request was -- right now it's April 28th. The joint
13 stipulated request it was extended a month to May 31st.

14 THE COURT: I didn't grant that.

15 MR. KESHAVARZ: That's right.

16 THE COURT: It's the 28th but you won't have any
17 trouble getting the 31st. Frankly, if this conference is any
18 indication the 31st might be optimistic.

19 MR. KESHAVARZ: Yes. Particularly if there's a
20 motion to amend that's granted.

21 THE COURT: If there's nothing else you've put on
22 the record what you wanted to put on. We'll be adjourned.
23 We'll wait to hear from you.

24 MR. LICHTMAN: Thank you, Judge.

25 MR. KESHAVARZ: Thank you, Your Honor.

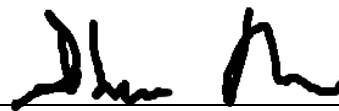
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: We're adjourned then.

MR. BALBER: Thank you, Your Honor.

* * * * *

1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

4 
5

6 Shari Riemer, CET-805

7 Dated: April 7, 2017
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25